

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

CLASSIC VALET PARKING, INC.
Employer

and

Case 29-RC-148399

LOCAL 1102, RETAIL, WHOLESALE &
DEPARTMENT STORE UNION,
UNITED FOOD AND COMMERCIAL WORKERS
Petitioner¹

DECISION AND DIRECTION OF ELECTION

Classic Valet Parking, Inc. (“Classic Valet” or “the Employer”) provides parking and transportation services at various locations in New York, New Jersey and Connecticut (“the tri-state area”), including at Stony Brook University Hospital (“the Stony Brook site”) in Stony Brook, New York. On March 18, 2015, Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers (“the Petitioner”) filed a petition under Section 9(c) of the National Labor Relations Act (“the Act”), seeking to represent a unit of approximately 22 - 25 drivers (a.k.a. “runners”), cashiers and greeters who regularly work at the Stony Brook site.²

Although the Employer never expressly contended that the petitioned-for unit would be *inappropriate*, it initially contended that “an” appropriate unit would include all

¹ The Petitioner’s name appears as amended at the hearing.

² The petitioned-for unit appears as amended. Although the Petitioner initially sought only the drivers at Stony Brook, it later amended its petition to include greeters and cashiers at Stony Brook as well (Transcript pp. 147-8), and to exclude drivers/runners, greeters and cashiers employed at other locations (Transcript pp. 154-5).

380 of its employees in the tri-state area or, alternatively, a unit of approximately 80 – 100 employees in the Brooklyn, Queens and Long Island region. In its post-hearing brief, the Employer proposed yet another alternative unit, consisting of an unspecified number of employees who work in Long Island. The Petitioner disagrees, contending that its petitioned-for unit limited to the Stony Brook site is appropriate. Thus, the parties dispute the geographical scope of an appropriate unit.³

A hearing on this issue was held before Matthew Jackson, a Hearing Officer of the National Labor Relations Board (“the Board”). The Employer called its president and owner, Julian Marte, to testify, and the Petitioner called five drivers to testify. Pursuant to Section 3(b) of the Act, the Board has delegated authority in this proceeding to the undersigned Regional Director.

For the reasons discussed below, I conclude that the single-site unit sought by the Petitioner is appropriate for purposes of collective bargaining. Accordingly, I will direct an election among the petitioned-for employees regularly employed at the Stony Brook site.

FACTS

Background – general description of the operations at Stony Brook

The record indicates that, in December 2013, the Employer entered a contract to provide valet parking services at Stony Brook University Hospital, affiliated with Stony Brook University, State University of New York (SUNY). When cars arrive at certain

³ In its post-hearing brief, the Employer seems to have misunderstood the Petitioner’s amendment of its proposed unit. (See footnote 2 above.) Both the Petitioner and the Employer agree that an appropriate unit would include the classifications of drivers/runners, greeters and cashiers. Thus, there is no dispute over the composition of the unit, only its geographic scope.

entrances to drop off patients or visitors, the Employer's employees greet the passengers, give them a numbered ticket, and park their cars in one of four nearby lots. Valet parking services are available at the main hospital entrance (until 9:00 p.m., 7 days/week), at the emergency entrance (24 hours/day, 7 days/week) and at the radiation oncology and cancer center entrances (Monday through Friday only, until 6:00 and 6:30 p.m., respectively). Visitors pay \$10 for valet parking services at the main entrance, but they do not have to pay for such services at the emergency entrance if they get their ticket "stamped."

Most of Classic Valet's employees are "runners" or drivers who bring the customers' cars from the entrances to the parking lots and, then, from the lots back to the entrances when the patients are ready to leave. Classic Valet employs relatively few greeters and cashiers. The employees who testified at the hearing all began working at the Employer's Stony Brook site approximately 15 months before the hearing in March 2015, i.e., around the time that the Classic Valet began providing the services at Stony Brook in December 2013.

General testimony regarding the Employer's other locations

The president and owner of Classic Valet, Julian Marte, testified that it employs about 400 people in the tri-state area, about 380 of whom are non-supervisory. Marte estimated that employees work at approximately 200 different sites in the tri-state area, including medical offices, luxury car dealerships, country clubs and catering halls when there are weddings and other special events.

The Employer's office is located in New Rochelle, Westchester County, New York.

Marte further testified that sites with 10 or more employees generally have an on-site supervisor. On-site supervisors report to the Employer's regional managers. The Employer employs about 10 regional managers, including two for the Brooklyn/Queens/Long Island⁴ region: Elias Cabanas and Marco Mendoza.⁵ (Marte testified that there are approximately 80 to 100 employees in the Employer's Brooklyn, Queens and Long Island region.) The regional managers report to general manager Ervin Melendez who, in turn, reports to Marte. Both Melendez and Marte are based in the New Rochelle office.

Evidence regarding the community of interest among the Employer's sites

There seems to be no dispute that employees perform similar duties at all of the Employer's sites, and that they wear the same uniform.

As stated above, the Petitioner in this case seeks to represent a unit of employees who work at the Stony Brook University Hospital site on a regular basis. The Petitioner initially petitioned for a group of approximately 20 runners/drivers. The Petitioner later amended its proposed unit to include the greeters and cashiers as well. Thus, it appears that the petitioned-for unit, as amended, consists of approximately 22 -25 employees who regularly work at the Stony Brook site.

The Employer's witness, president and owner Julian Marte, initially contended that there are about 40 employees who work at Stony Brook at various times; that only

⁴ Since Long Island consists of Nassau and Suffolk Counties, witnesses sometimes referred to this region as "Brooklyn, Queens, Nassau and Suffolk." Stony Brook is located in Suffolk County.

⁵ Contrary to an assertion in the Employer's post-hearing brief, there is no "single supervisor for all sights [sic] in Long Island, Brooklyn and Queens." Nor is there any evidence that "all employee supervisors are stationed in the New Rochelle office." (Employer's Brief, p. 3.)

half of them (20) work there regularly; that the other half (20) also spend time working at various other locations; and therefore that there is a great deal of “interchange” among the sites. However, the record evidence does not support Marte’s contentions in this regard. First of all, it is not clear that Marte was qualified to testify about employees’ work assignments, since he stated that he does not make the employees’ schedules and that he has no personal knowledge of them. Furthermore, although the Employer introduced some payroll records, those records do not seem to support Marte’s contentions. Specifically, the Employer introduced one week’s worth of payroll records (Employer Exhibit 2)⁶, showing all the employees who worked at the Stony Brook site during the week ending 3/18/2015, i.e., the week immediately before the hearing. During that week, only 28 employees worked at the Stony Brook site for any portion of the week. For 22 of those 28 employees (79%), Stony Brook was the *only* Classic Valet site where they worked. Only 6 of the 28 (21%) worked at Stony Brook and other locations, as follows:

Jose A. Perez	Stony Brook (30 hrs.) Lexus of Rockville Center (17 hrs.) Village of Lake Success (27 hrs.)
Ervin Melendez (general manager)	Stony Brook (24 hrs.) Condo. Medical Arts bldg. in Bay Shore (21 hrs.) the Village of Lake Success (10 hrs.)
Joshua Marte (owner’s son)	Stony Brook (15 hrs.) “Condo” in Bay Shore (6.8 hrs.) Village of Lake Success (12.5 hrs.)

⁶ All references to the record in this case are hereinafter abbreviated as follows: “Tr. #” refers to transcript page numbers. “Er. Ex. #” and “Pet. Ex. #” refer to Employer exhibits and Petitioner exhibits, respectively.

It should be noted that the Employer’s post-hearing brief purported to send additional payroll records as an attachment (Brief p.3), but no such records were attached. In any event, the Region would have disregarded evidence improperly submitted after the close of the hearing.

Mario Barajas	Stony Brook (18 hrs.) Land Rover of Huntington (22 hrs.)
Osmar Gonzalez	Stony Brook (30 hrs.) “Condo” in Bay Shore (16 hrs.) Lexus in Massapequa (16 hrs.)
Elias Cabanas (regional manager)	Stony Brook (40 hrs.) Land Rover in Huntington (20 hrs.) Village of Lake Success (30.5 hrs.).

Furthermore, assuming that at least 3 of those 6 would be excluded from any bargaining unit (as supervisors⁷ and the owner’s son), the percentage of unit employees who worked exclusively at Stony Brook would actually be 88% (i.e., 22 out of only 25).

The testimony of the Petitioner’s witnesses also contradicts the Employer’s contentions. Specifically, all five of Petitioner’s witnesses testified that, since they began working at the Stony Brook site approximately 15 months ago, Stony Brook was the *only* Classic Valet site where they worked. Furthermore, they testified that they usually work with the same co-workers. For example, both Edwin Arias and Ramon Perez both work at the hospital’s main entrance, Monday through Friday 3:00 p.m. to 11:00 p.m. (In addition, Arias usually works on Sundays, and Perez usually works on Saturdays.) Both drivers testified that they work with the same people on weekdays every week, including Jose A. Perez and Indhira Valdez. They both further testified that, to their knowledge, their co-workers do *not* work at other Classic Valet sites. In fact, Arias testified that he also happens to live with Jose A. Perez, and knows that Jose A. Perez does not work elsewhere. Nevertheless, on cross-examination, Arias conceded that Jose A. Perez had

⁷ The parties stipulated at the hearing that both Elias Cabanas and Ervin Melendez are supervisors as defined in Section 2(11) of the Act, in that they have independent authority to “direct” employees (Tr. 156).

not worked at Stony Brook on the Thursday and Friday before the hearing -- the days when, the Employer contends, Jose A. Perez worked in Lake Success. (Arias said he thought that Jose A. Perez had stayed home sick those two days.) Since Jose A. Perez did not testify, and the Employer introduced only one week of payroll records into evidence, it is somewhat difficult to reconcile this specific discrepancy, and to confirm the extent of interchange among sites generally.

The Petitioner's witnesses differed somewhat regarding working with Joshua Marte, the owner's 23-year-old son. One witness said he never worked with Joshua Marte, and did not know him. Three other witnesses said that they had worked with him a few times, at least until he (Joshua) returned to his university studies. None of the Petitioner's witnesses said they worked with general manager Ervin Melendez, and three witnesses said they do not even know who he is.

There is no dispute that Classic Valet employees who work at Stony Brook must wear a Stony Brook identification badge, in addition to their Classic Valet uniforms. Employees testified that the badge allows them access to certain areas within the hospital grounds. Each laminated badge has the employee's name, photograph and identification number, in addition to the words "Valet Parking Vendor" and "Stony Brook University Affiliate." (*See* Pet. Ex. 1.) Employees received their Stony Brook badge about one week after they commenced employment at the Stony Brook site. The record does not indicate whether the 40 employees who allegedly work at Stony Brook at various times, all have Stony Brook badges.

Julian Marte also testified that employees are hired "from" the Employer's office in New Rochelle, in the sense that the paperwork is sent there. All five employee-

witnesses testified that they were interviewed and hired by Elias Cabanas in Long Island. They did not have to go to New Rochelle. For example, Jonathan Cardona stated that he filled out an application at the Stony Brook site, and gave it to Cabanas there. Cabanas told Cardona that he would be working at the emergency exit, Mondays through Saturdays. Similarly, witness Edwin Arias both testified that Cabanas hired him locally,⁸ and that he had never been to the New Rochelle office.

The only employee-witness who said he had been to the New Rochelle office was Emmanuel Dilone. When Dilone had a vehicular accident, he had to make a report there. Julian Marte similarly testified that drivers must report accidents at the New Rochelle office.

During the hearing, there was some confusion regarding the identity of “site supervisors” versus regional managers. As noted above, Marte testified generally that sites with 10 or more employees have an on-site supervisor, who reports to the Employer’s regional managers. Marte further testified that employees’ schedules and geographical assignments are controlled by the regional managers; that the regional managers communicate the schedule to employees via the site supervisors; that the site supervisors report the employees’ hours worked each week to the regional managers for payroll purposes, and that the payroll is generated out of the Employer’s New Rochelle

⁸ As noted above, Arias lives with Jose A. Perez in Port Jefferson, Suffolk County. Arias previously worked for Classic Valet at country clubs when there were weddings and other parties, from 2007 to about 2011. Elias Cabanas, who was Arias’ supervisor at that time, apparently knew that Arias was Perez’s housemate in late 2013, when Classic Valet got the Stony Brook contract. Arias testified that Cabanas came to their house to ask Arias if he wanted to re-apply to work as a valet driver for the Employer, at the Stony Brook site.

office. Marte also stated specifically that the Employer is “supposed to” have on-site supervision under its contract with Stony Brook University Hospital.⁹

When Marte initially testified at the beginning of the hearing, no site supervisor was specifically identified by name, although the regional managers were identified as Elias Cabanas and Marco Mendoza. Subsequently, when the Petitioner’s witnesses testified, they repeatedly named Elias Cabanas as the person who hired them to work at Stony Brook, who trained them, who sets their schedules, who may change their assignment if necessary,¹⁰ who generally monitors and oversees their work, who corrects employees if they do something wrong, who gives them timesheets to sign each week, and who gives them their paychecks. Employees also testified that they must contact Cabanas to call in sick. Ramon Peralta explained that there is a telephone in the parking booth at the emergency entrance, and that Cabanas can be reached by phone if any problems arise during the shift. Peralta also testified that Cabanas had disciplined him once, when Peralta “did something” (unspecified) that Cabanas did not like. Thus, the testimony from employee-witnesses seemed to suggest that Cabanas spends a great deal of time at Stony Brook, essentially as a site supervisor there. Furthermore, there is no evidence that Cabanas works at the Employer’s office in New Rochelle, or that he needs approval from upper management there, such as the general manager or president, for

⁹ The contract’s “pricing page” (attached to Er. Ex. 1) specifically contemplates an “AM Site Supervisor” and a “PM Site Supervisor” at the hospital’s main entrance, Monday through Friday, and then dual-purpose supervisor-cashiers at the main entrance on Saturdays and Sundays.

¹⁰ For example, Ramon Peralta testified that Cabanas initially assigned him to work at the main entrance, from 7:00 a.m. to 3:00 p.m., six days/week, which Peralta did for five months. Then Cabanas assigned Peralta to work at the emergency entrance instead. Then Cabanas also changed Peralta’s hours. For the past two months, Peralta has worked at the emergency entrance from 10:00 a.m. to 7:00 p.m.

making personnel decisions. There was also no specific evidence that Cabanas manages any sites in Brooklyn or Queens.

Consequently, Marte was re-called to the stand, in part to clarify the Employer's supervisory hierarchy. Marte declined to estimate how much time Cabanas spends at the Stony Brook site, as opposed to other sites in Brooklyn, Queens and Long Island. Marte explained generally that Cabanas spends more time at Stony Brook because of Cabanas' "commute time," but also insisted that Cabanas has responsibilities at other sites too. The Employer bills the clients for Cabanas' time at their respective sites. The payroll records for the week ending March 18, 2015 (Er. Ex. 2) purport to show that Cabanas worked 90.5 hours that week, including 40 hours at Stony Brook, 30.5 hours at Lake Success, and 20 in Huntington. On cross-examination, the Petitioner implicitly challenged the accuracy of these records, for example, by asking how Cabanas could work until 5:00 p.m. in Stony Brook and then start working in Lake Success the same evening at 5:00 p.m.¹¹ In any event, when Marte was asked who the site supervisor was at Stony Brook, he answered that it "could be" Cabanas "when he is there," or Mario Barajas, or Jose A. Perez (who was previously identified as a driver).

The payroll records admitted into evidence indicate that employees' hourly wages range between \$7.50/hour and \$9.00/hour at Stony Brook. Marte testified that employees who work in assignments where they are likely to get tips earn \$7.50/hour, whereas those who generally do not make tips (e.g., at the cancer center entrance) earn \$8.75/hour (i.e., the minimum wage in New York State) or more. Marte further testified that the hourly

¹¹ According to Google maps, Lake Success is more than 30 miles from Stony Brook.

rates are “pretty similar” at other sites. Marte did not specifically describe other terms of employment such as benefits, but when asked if the terms and conditions of employment were the “same” regardless of the site, Marte answered affirmatively.

Finally, although Marte characterized the Employer’s sites in “the area” as being “geographically close” to each other, the record does not contain any specific information in that regard. As noted above, Lake Success (in Nassau County) is more than 30 miles west of Stony Brook (in Suffolk County). Contrary to an assertion in the Employer’s post-hearing brief, there is no evidence that the Long Island sites are “within a few miles of each other.” The Employer did not mention any specific sites in Brooklyn or Queens. According to Google maps, the driving distance between Stony Brook and the Employer’s office in New Rochelle (Westchester County) is more than 50 miles.

DISCUSSION

As stated above, the only issue to be decided is the geographical scope of the proposed bargaining unit. The Petitioner has petitioned for a unit of 22-25 employees who work regularly at the Stony Brook University Hospital site. At the hearing, the Employer claimed that an appropriate unit would include all 380 of its employees in the tri-state area or, alternatively, a unit of approximately 80 – 100 employees in the Brooklyn, Queens and Long Island region. In its post-hearing brief, the Employer also contended that an appropriate unit might consist of an unspecified number of employees who work in Long Island. I conclude in this case that the petitioned-for unit limited to the Stony Brook site is appropriate for the purposes of collective bargaining.

Initially, it bears repeating that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988), Dezcon, Inc.; 295 NLRB 109 (1989). Whenever a labor organization seeks to represent employees at a single location of a multi-location employer, the Board generally presumes the single-location unit to be appropriate, even though a broader unit might also be appropriate. A multi-location employer who asserts that the single-location unit is *inappropriate* must rebut the presumption, for example, by showing that the single plant is so integrated with the other plants as to lose its separate identity. Cargill, Inc., 336 NLRB 1114 (2001); Kendall Co., 184 NLRB 847 (1970). The burden is on the employer to prove by affirmative evidence a lack of autonomy at the local level. J & L Plate, Inc., 310 NLRB 429 (1993). *See also* Specialty Healthcare and Rehabilitation Center of Mobile, 357 NLRB No. 83, slip op. at p. 13 (2011)(when a petitioned-for group is readily identifiable based on work locations or other factors, a party who contends that only a larger unit is appropriate must show an “overwhelming” community of interest among employees in the larger unit). The relevant factors include the extent of interchange and contact among employees at the different facilities; their functional integration; the extent of centralization in management and supervision, especially with regard to labor relations (hiring, firing, affecting the terms of employment); geographical distance between the facilities; and the history of collective bargaining.

In the instant case, the Employer has not met its burden of showing that the petitioned-for unit, limited to the Stony Brook site, inappropriately excludes employees

who work at the Employer's other sites. First of all, the record evidence does not support the Employer's contention that there is a group of "40 employees" who work at Stony Brook and other sites, and that only "half" of those employees work exclusively at Stony Brook. The Employer's own documentary evidence (Er. Ex. 2) shows that only 3 unit employees worked at Stony Brook and other locations in the week before the hearing. The vast majority (22 out of 25) worked exclusively at Stony Brook that week. Furthermore, the Petitioner's witnesses all testified that they have worked exclusively at Stony Brook since they began working there about 15 months ago; that they do not work at the Employer's other sites; and that they consistently work with the same co-workers during their shifts. Although some witnesses acknowledged occasionally working with other people, such as the owner's son Joshua Marte, the record clearly does not support the Employer's claim of substantial "interchange" among various sites. Nor does the Employer's evidence explain how a group of "40" employees from various sites could work at Stony Brook on occasion, without all 40 having the official identification badge required by Stony Brook to work on the hospital premises.

Furthermore, the record clearly shows a high level of local autonomy at the Stony Brook site, rather than centralized control at the "regional" level or at the Employer's office in New Rochelle. Specifically, although Marte initially claimed that the Employer's hiring and scheduling of employees is done at the New Rochelle office, the probative evidence shows that Elias Cabanas interviewed and hired employees locally for the Stony Brook site when the Employer began its contract with the hospital there. Cabanas also has authority to change employees' assignments and schedules at Stony Brook, and to approve their timesheets for payroll purposes. Furthermore, although

Cabanas may have the title of “regional manager,” he seems to spend significant time at Stony Brook, effectively serving as an on-site supervisor there. Thus, the separate supervision at the Stony Brook site, which the Board has found to be “of particular importance,” Catholic Healthcare, d/b/a Mercy Sacramento, 344 NLRB 790 (2005), supports the appropriateness of the single-site unit. The record contains no evidence that Cabanas’ responsibilities at other sites (Brooklyn, Queens and elsewhere) have actually consolidated or integrated management at a regional level, such that the Stony Brook site has lost its separate identity. In addition, there is no evidence that centralized management from the Employer’s office in New Rochelle requires a unit encompassing all of its employees in the tri-state area. Marte repeatedly admitted that he has no firsthand knowledge of the employees’ schedules because the “regional managers” determine those schedules.

Finally, the Employer has not submitted evidence to support its contention that its sites in the Brooklyn/Queens/Long Island “region,” or even those in Long Island, are geographically close to each other. The Employer’s comments regarding “bargaining history” in a larger unit are incorrect.¹²

In the instant case, the Employer has submitted some evidence to support that a multi-site unit might also be appropriate. For example, employees at the multiple sites are employed by the same employer, engaged in providing similar parking and

¹² At the hearing and in its post-hearing brief, the Employer claimed that this Agency had “decided” in a Region 2 case that an Employer-wide unit was appropriate. However, the Agency did not make any such determination. I hereby take administrative notice of Case 02-RC-121593, in which another union filed a petition for Classic Valet’s employees at all locations. The petition was thereafter withdrawn by that union, with no “decision” or finding having been made about the appropriateness of the unit. Thus, there is no evidence of “bargaining history” regarding Classic Valet’s employees at any location.

transportation services, using the same types of skills. They all wear the same Classic Valet uniform. And there is some evidence that employees' wages are "similar" from site to site. Nevertheless, I find that this evidence does not show integration "so substantial" as to negate the separate identity of the petitioned-for unit of employees at the Stony Brook site. On the contrary, the record clearly shows that an appropriate unit of 22-25 employees has regularly worked together at the Stony Brook site, under local supervision, and has retained its separate identity. Or, as stated in the parlance of Specialty Healthcare, supra, the Employer has not shown that this "readily identifiable" group at Stony Brook shares an "overwhelming" community of interest with employees in any of the Employer's proposed larger units.

In sum, based on all the foregoing, I find that the Employer's evidence falls short of rebutting the presumptive appropriateness of the petitioned-for unit of employees at the Stony Brook site. Accordingly, I find that the petitioned-for unit is an appropriate unit for collective bargaining, and I will direct an election in that unit below.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. The Hearing Officer's rulings are free from prejudicial error and are hereby affirmed.
2. The parties stipulated that Classic Valet Parking, Inc., is a domestic corporation, with its principal office located at 92 North Avenue, New Rochelle, New York. It is engaged in providing parking and transportation services at various locations

in New York, New Jersey and Connecticut, including at the Stony Brook University Hospital in Stony Brook, New York. During the past year, which period represents its annual operations generally, the Employer provided services valued in excess of \$50,000 to Stony Brook University Hospital, an entity directly engaged in interstate commerce.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I hereby find, that Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers, is a labor organization as defined in Section 2(5) of the Act. It claims to represent certain employees of the Employer.

4. A question concerning commerce exists concerning the representation of those employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. As discussed above, I find that the following employees constitute an appropriate unit for purposes of collective bargaining:

All full-time and regular part-time runners (also known as drivers), greeters and cashiers who are regularly employed by the Employer at its Stony Brook University Hospital site, located in Stony Brook, New York, but excluding all employees employed at other sites, administrative employees, clerical employees, professional employees, confidential employees, casual or per diem employees, managerial personnel, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **April 30, 2015**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,¹³ by mail, or by

¹³ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

facsimile transmission at (718) 330-7579. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 of the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C.

20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **May 7, 2015**. The request may be filed electronically through the Agency's website, www.nlr.gov,¹⁴ but may **not** be filed by facsimile.

Dated: April 23, 2015.

/s/

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

¹⁴ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, click on the NLRB Case Number, and follow the detailed instructions.